

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KARL LIMPIN,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security Administration,

Defendant.

CASE NO. 08cv1394 JM(RBB)

ORDER GRANTING MOTION TO
DISMISS; DENYING MOTION FOR
CLASS CERTIFICATION

Plaintiff Karl Limpin moves for class certification and Defendant Michael J. Astrue, Commission of Social Security Administration (“Commissioner”), moves to dismiss Plaintiff’s complaint for failure to exhaust available administrative remedies. The Commissioner opposes Plaintiff’s motion. Plaintiff did not file an opposition nor a statement of non-opposition to the Commissioner’s motion. Pursuant to Local Rule 7.1(d)(1), the court finds this matter appropriate for decision without oral argument. For the reasons set forth below, the court grants Commissioner’s motion to dismiss for lack of subject matter jurisdiction and denies Plaintiff’s motion for class certification as moot.

BACKGROUND

On July 31, 2008 Plaintiff commenced this action alleging claims for (1) improper computation of benefits pursuant to Title XVI, §§1611(a)(1) and (b)(1) of the Social Security Act (“SSA”); and (2) a declaration that the amount of Title XVI benefits is \$1,752 per month for individuals and \$2,628 per

1 month for couples. (Compl. ¶¶21-25, 26-32). In broad brush, Plaintiff alleges that the Supplemental
 2 Security Income ("SSI") benefits, Title XVI of the SSA, 42 U.S.C. §§1382(b)(1) and (b)(2) is
 3 presently capped at \$1,752 per month, but that he is only receiving \$1,006 per month. (Compl. ¶22).
 4 However, because Plaintiff is receiving Title II benefits in the amount of \$1,006, he is allegedly
 5 deprived of \$746 per month (\$1,752 less \$1006) in SSI. (Compl. ¶30). For years 2004 through 2007,
 6 Plaintiff alleges that he is owed \$78,876 by the Commissioner. (Compl. ¶30).

7 On April 10, 2006 an Administrative Law Judge awarded Plaintiff Title II disability benefits
 8 under the SSA and Title XVI benefits under SSI. (Compl. ¶1). Plaintiff alleges that he was informed
 9 by letter on August 5, 2006 that his 3 years and 4 months retroactive Title II benefits of \$26,434 would
 10 be offset or reduced by the Title XVI benefits of \$8,485. (Compl. ¶6).

11 In December 2007, an ALJ determined that Plaintiff should have a deemed application filing
 12 date of January 2004 for his SSI benefits and the ALJ remanded the issue of the SSI calculation to the
 13 San Diego Office to determine whether Plaintiff was eligible for any additional SSI benefits from
 14 January to December 2004. (Compl. ¶15; Bowen Decl. ¶11). The San Diego Office determined that
 15 it would not pay any additional SSI benefits for the period as Plaintiff had already been paid Title II
 16 disability benefits. (Compl. Exh. A; Bowen Decl. ¶12). If the Commissioner paid any more SSI
 17 benefits to Plaintiff for that period, Plaintiff would have been overpaid in Title II disability benefits.
 18 (Bowen Decl. ¶12).

19 On or about February 3, 2008 Plaintiff sought review of that decision by the Appeals Council.
 20 (Compl. ¶17). The Appeals council construed the request as a request for reconsideration of the San
 21 Diego District Office's determination regarding the issue of SSI eligibility for the period from January
 22 to December 2004. (Bowen Decl. ¶13). The San Diego District Office is currently reconsidering
 23 whether it properly calculated Plaintiff's potential SSI eligibility for that period. Id.

24 DISCUSSION

25 Legal Standards

26 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a complaint may be
 27 dismissed for "lack of jurisdiction over the subject matter." Fed.R.Civ.P. 12(b)(1). In considering a
 28 motion to dismiss for lack of subject matter jurisdiction, "no presumptive truthfulness attaches to

1 plaintiff's allegations, and the existence of disputed material facts will not preclude the court from
 2 evaluating for itself the merits of jurisdictional claims." Augustine v. United States, 704 F.2d 1074,
 3 1077 (9th Cir. 1983). Attacks challenging the subject matter jurisdiction of the court can be either
 4 facial or factual, allowing "the court to look beyond the complaint." Savage v. Glendale Union High
 5 School, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). "Once the moving party has converted the motion
 6 to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the
 7 court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its
 8 burden of establishing subject matter jurisdiction." Id.

9 **Subject Matter Jurisdiction**

10 The SSA provides a multi-step process for the administrative review and adjudication of
 11 disputed claims. Schweiker v. Chilicky, 487 U.S. 412, 424 (1988). Judicial review of final decisions
 12 on claims arising under Title II or Title XVI of the SSA is provided for in sections 205(g) and (h).
 13 42 U.S.C. §§405(g) and (h). These provisions provide the exclusive remedy to challenge
 14 administrative determinations:

15 (g) Any individual, after any final decision of the Commissioner made after a hearing
 16 to which he was a party, irrespective of the amount in controversy, may obtain a
 17 review of such decision by a civil action commenced within sixty days after the
 mailing to him of notice of such decision or within such further time as the
 Commission may allow.

18 (h) The findings and decision of the Commissioner after a hearing shall be binding
 19 upon all individuals who were parties to such hearing. No findings of fact or decision
 20 of the Commissioner shall be reviewed by any person, tribunal, or governmental
 21 agency except as herein provided. No action against the United States, the
 Commission, or any officer or employee thereof shall be brought under section 1331
 or 1346 of Title 28 to recover on any claim arising under this subchapter.

22 42 U.S.C. §§405(g) and (h). Based upon these provisions, the only civil action permitted on "any
 23 claim arising" under the Social Security Act is an action to review the "final decision of the Secretary
 24 [Commissioner] made after a hearing." Califano v. Sanders, 430 U.S. 99 108 (1977). A final decision
 25 is one where the plaintiff exhausts available administrative remedies. 42 U.S.C. §405(g); Cassim v.
 26 Bowen, 824 F.2d 791, 794 (9th Cir. 1987).


27 Here, the court concludes that Plaintiff has failed to exhaust available administrative remedies
 28 and therefore this court lacks jurisdiction to presently entertain Plaintiff's claims. The administrative
 appeals process generally includes an initial level, a reconsideration level, a hearing before an ALJ,

1 and an Appeals Council review. 20 C.F.R. §416.1400 et seq. Here, Plaintiff completed the initial
2 level and his appeal remains at the reconsideration level. (Bowen Decl. ¶¶12, 13). Consequently, the
3 court lacks subject matter jurisdiction to entertain Plaintiff's claims because the administrative
4 proceedings are not yet final¹.

5 In sum, the court dismisses Plaintiff's action without prejudice, subject to exhaustion of
6 available administrative remedies. The court also denies Plaintiff's motion for class certification as
7 moot. The Clerk of Court is instructed to close the file.

8 **IT IS SO ORDERED.**

9 DATED: January 20, 2009

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11 Hon. Jeffrey T. Miller
United States District Judge

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28 ¹ On the merits, Plaintiff appears to be under the mistaken belief that Title XVI benefits are capped at \$1,732 per month (plus the supplement). The statute at issue, 42 U.S.C. §1382(b)(1), limits the amount of yearly benefits, and not monthly benefits.